

**DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
Before the Commissioner of Financial and Insurance Services**

**In the matter of**

**Order No. 08-009-M**

*Insurance Company Name*

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**Issued and entered  
this 14th day of February, 2008  
by Frances K. Wallace  
Chief Deputy Commissioner**

**NOTICE AND ORDER WITHDRAWING APPROVAL PURSUANT TO  
MCL 500.2236(5)**

In *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005), the Michigan Supreme Court reversed a Court of Appeals decision that had invalidated an insurance policy provision and held that, “The judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties . . . .” In reaching this conclusion, the Court said:

Clearly, the Legislature has assigned the responsibility of evaluating the “reasonableness” of an insurance contract to the person within the executive branch charged with reviewing and approving insurance policies: the Commissioner of Insurance. The statute permits, but does not require, the Commissioner to disapprove or withdraw an insurance contract if the Commissioner determines that a condition or exception is unreasonable or deceptive. The decision to approve, disapprove, or withdraw an insurance policy form is within the sound discretion of the Commissioner. *Rory, supra*, 473 Mich at 475 (footnote omitted).

MCL 500.2236(5) specifies the standards the Commissioner must use when reviewing and disapproving, withdrawing approval of or prohibiting the issuance of insurance policy forms:

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Upon written notice to the insurer, the commissioner may disapprove, withdraw approval or prohibit the issuance, advertising, or delivery of any form to any person in this state if it violates any provisions of this act, or contains inconsistent, ambiguous, or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy. The notice shall specify the objectionable provisions or conditions and state the reasons for the commissioner's decision. If the form is legally in use by the insurer in this state, the notice shall give the effective date of the commissioner's disapproval, which shall not be less than 30 days subsequent to the mailing or delivery of the notice to the insurer. If the form is not legally in use, then the disapproval shall be effective immediately.

MCL 500.2236(6) specifies the procedure an insurer must follow to seek review of an action taken by the commissioner under MCL 500.2236(5):

If a form is disapproved or approval is withdrawn under the provisions of this act, the insurer is entitled upon demand to a hearing before the commissioner or a deputy commissioner within 30 days after the notice of disapproval or of withdrawal of approval. After the hearing, the commissioner shall make findings of fact and law, and either affirm, modify, or withdraw his or her original order or decision.

Since the Supreme Court's decision in *Rory v Continental Ins. Co.*, *supra*, in July 2005, the Office of Financial and Insurance Services (OFIS) has reviewed terms in many private passenger automobile insurance policies, either submitted by insurers in response to a policy form survey or submitted by complainants to OFIS Consumer Assistance staff. This review of policy forms showed that many private passenger automobile insurers have included vehicle inspection clauses in their forms that void coverage altogether in circumstances that are often beyond the control of the insured.

A typical provision requires as a condition for coverage that an insured seeking uninsured motorist benefits following a hit and run accident make the vehicle available for inspection by the insurer within 15 days of the accident, without further limitation or qualification. Another common provision requires an insured as a condition of coverage

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to allow the insurer to inspect a car occupied by the insured during the accident, without further qualification. An insured seriously injured or killed in the accident may not be able to satisfy these requirements. An insured or his Personal Representative may not have possession or control of the vehicle involved. In hit and run situations, particularly those involving pedestrians, the insured may not be able to identify the involved vehicle within 15 days of an accident, if ever. In Michigan, it typically takes longer than 15 days for a court to appoint a Personal Representative for a deceased insured or Guardian and Conservator for an incapacitated person. Law enforcement officials may impound a vehicle for further investigation after an accident. Even in those circumstances where the insured is able to act and the hit and run driver is ultimately identified, the insured may not learn that the driver is uninsured or underinsured until long after 15 days following the accident. The Secretary of State's staff advises that potential claimants cannot obtain from that office complete and up-to-date information on whether a driver was insured on any given day. The Secretary of State requires proof of insurance only at the time a vehicle is registered, but that office does not retain those proofs of insurance in its records.

In light of these circumstances, a 15-day or day-specific vehicle inspection requirement tied to the date of the accident or a vehicle inspection requirement not limited to vehicles within the possession and control of the insured are exceptions or conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy in violation of MCL 500.2236(5). A person who has purchased coverage may find coverage denied as a result of circumstances beyond his or

her control, and the policyholder will have paid for coverage that is illusory as a practical matter.

It is reasonable for insurers to include certain vehicle inspection requirements in private passenger automobile policies, including uninsured or underinsured endorsements, provided any day-specific time requirements include an extension if it is not reasonably possible for an insured or his representative to act within the time allotted and provided the vehicle inspection requirement is limited to vehicles within the possession and control of the insured or his representative. Any specific time requirement for notice to insurer for vehicle inspection must be subject to the mandatory policy provision of MCL 500.3008 that failure to act, notify the insurer, or make the vehicle available for inspection within the time specified in the policy shall not invalidate any claim made by the insured if it shall be shown not to have been reasonably possible to act within the prescribed time and notice to the insurer was given as soon as was reasonably possible. Also, to be a reasonable condition under MCL 500.2236(5), all vehicle inspection requirements must be limited to apply only to a vehicle in the possession and control of the insured when inspection is required.

OFIS issued an order on February 13, 2008 (Order #08-008-M) prohibiting automobile insurers without such forms already in use in Michigan from issuing, advertising, or delivering to any person in Michigan a private passenger automobile policy or rider, including an uninsured or underinsured motorist endorsement, that contains a day-specific vehicle inspection time requirement without also including the mandatory extension language of MCL 500.3008 and language limiting the inspection requirement to a vehicle within the possession and control of the insured when inspection

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is required. That order also stated that the Commissioner may withdraw approval of forms in use containing such clauses under MCL 500.2236(5) by separate order at any time.

### **ORDER**

Accordingly, effective April 14, 2008, the Commissioner withdraws approval of any and all private passenger automobile policies and riders, including uninsured or underinsured motorist endorsements, currently used by *Insurance Company Name* in Michigan, that contain day-specific vehicle inspection time requirements that do not also include the mandatory extension language of MCL 500.3008 or that do not limit the vehicle inspection requirement to a vehicle within the possession and control of the insured or his representative when inspection is required.

*Insurance Company Name* may request a contested case hearing to challenge this notice and order withdrawing approval by filing a request for a contested case hearing pursuant to MCL 500.2236(6) and 1979 AC, R 500.2103 within 60 days of the date of mailing of this notice and order withdrawing approval with Dawn Kobus, Hearings Coordinator, 611 W. Ottawa Street, 3<sup>rd</sup> Floor, Lansing, MI 48933, FAX (517) 335-1727, [kobusd@michigan.gov](mailto:kobusd@michigan.gov). A request for hearing does not stay the effective date of this order.



Frances K. Wallace  
Chief Deputy Commissioner